

**Draft Cost-Benefit Analysis and Regulatory Flexibility Threshold Analysis:  
Proposed Regulation to Revise Certain Sections of 36 CFR Parts 1 and 2 to  
Address “Gathering of Plants or Plant Parts by Federally Recognized Tribes for  
Traditional Purposes.”**

**Introduction**

The proposed rulemaking, 36 CFR Parts 1 and 2 “Gathering of Plants or Plant Parts by Federally Recognized Tribes for Traditional Purposes”, is consistent with Executive Order 13563 on Improving Regulation and Regulatory Review (<http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>). The proposed rulemaking provides for a process by which the National Park Service (NPS) can respond to requests made voluntarily by federally recognized tribes to gather certain natural materials needed for traditional cultural practices. The NPS needs to be able to respond to such requests in a consistent manner that considers NPS statutory requirements and policy for resources management. Part of that policy is to enhance tribal participation in NPS programs that respects the government-to-government relationship as well as the traditional associations that Native Americans have with NPS lands. Consistent responses by the NPS also should be administered within the existing programs and capacities of NPS units. To address the requirements of EO 12866 (including OMB Circular A-4), the Unfunded Mandates Reform Act of 1995 (Public Law 104-4; UMRA), and the Small Business Regulatory Enforcement Fairness Act (SBREFA), the following analysis provides:

- A summary of the status quo,
- A statement of need for NPS’s proposed rulemaking,
- An overview of the expected benefits and costs, and
- A discussion of the economic impact on small entities.

The qualitative and quantitative analyses provided rely on the best readily available data. More detailed in-depth analysis would require costly research and study on tribal cultural values. Given the data limitations, the NPS believes that the analyses below provide the best possible assessment of relevant costs and benefits associated with the proposed regulatory action.

**Summary of the Status Quo**

Current regulations restrict the ability of the NPS to respond to requests by Indian tribes to gather plants or plant parts needed by tribes for traditional purposes, limiting the NPS to permit such gathering only in those parks where treaties or specific federal statutory authority exists. The proposed rule would authorize a process for extending limited gathering to parks throughout the National Park System through agreements that respect tribal sovereignty and the mission of the NPS.

The proposed rule would modify current NPS regulations to authorize agreements between the NPS and federally recognized Indian tribes to gather plants or plant parts for traditional purposes. NPS management of fish and wildlife would not be affected by the proposed rule. The prohibition on commercial use of gathered products would remain intact. All agreements authorized by the proposed rule would be subject to the requirements of the National Environmental Policy Act and other applicable laws.

## **Statement of Need for Rulemaking**

Executive Order 12866 (58 FR 51735) directs Federal agencies to demonstrate the need for the regulations they promulgate. In general, regulations should be promulgated only when a “market failure” exists that cannot be resolved effectively through other means. With regard to the purposes of and need for this proposed rule, a market failure exists because the requests by Indian tribes for plants or plant parts are based upon traditional cultural practices and are available only from traditional gathering places within NPS units. These traditional cultural practices are fundamental characteristics of tribes that are not transferable or subject to exchange in market contexts. The natural materials to be gathered are done so according to specific procedures and for personal use or use by tribes during traditional practices and occasions. These are non-market uses that derive from historical and cultural associations, not from exchange as an economic activity.

Existing NPS regulations at 36 CFR Part 2.1(c) allow for the personal consumption of “fruits, berries, nuts, or unoccupied seashells” by the general public, subject to certain conditions. The proposed rule is more limited. It applies only to authorized members of federally recognized Indian tribes that have traditional associations with specific park areas and that wish their members to gather plants or plant parts within those park areas for traditional uses.

Only designated officials of the NPS may make decisions about uses of plants or plant parts within units of the National Park System. Generally, those officials are superintendents of units. The proposed rule would authorize the superintendent, with the concurrence of the NPS Regional Director, to negotiate and enter into agreements upon requests by federally recognized Indian tribes that are traditionally associated with parklands for the gathering and removal of plants or plant parts for traditional purposes. The agreement would set forth terms and conditions by which tribal members, designated by the tribal government, would be allowed to gather. The superintendent, in consultation with the requesting Indian tribe(s), would be required to make a determination that the proposed gathering is a traditional use of the park area by the Indian tribe, and to analyze any potential impacts of the proposed gathering in accordance with the requirements of NEPA and other applicable laws.

## **Cost-Benefit Analysis**

The net benefits associated with this proposed rule depend on the number of federally recognized tribes that might seek to submit requests for gathering. The potential numbers of NPS units and tribes that would submit requests pursuant to the proposed rulemaking can be estimated based upon three types of existing formal relationships as well as limited surveys of NPS staff conducted regarding tribal interests in plant gathering since the mid-1990s. The formal relationships include:

- (1) self-governance tribes with cultural, geographical and historical ties to NPS units as required by Section 403 (c) of Title IV of the Indian Self-Determination and Education Assistance Act;
- (2) statutorily established special use rights for tribes or other Alaska Native groups in specific units of the National Park System; and,
- (3) close land RELATIONSHIPS, i.e., parks which share boundaries with tribes, tribes whose lands contain national park units, and/or have Indian trust land within national park units.

There are 110 Self-Governance tribes which may have geographical, historical, or cultural ties to 68 NPS units. To date, Self-Governance tribes are about 21% of the total number of federally recognized tribes.

There are 8 NPS units with special use rights regarding plants for 9 tribes or Alaska Native groups.

There are 39 tribes and Alaska Native groups with shared boundaries with 30 NPS units. In addition, 9 park units were established within the exterior boundaries of 8 Indian reservations; and 3 park units contain parcels of Indian tribal trust land.

These three types of existing formal relationships are not mutually exclusive. For example, tribes with statutorily established use rights usually also share boundaries with the affected park(s).

The entire period over which these tribes might seek to establish agreements is uncertain. However, based on NPS's 15 year history with the Tribal Self-Governance Program which has produced 3 or fewer agreements annually and on NPS experience with Memorandum of Understanding with tribes, which with one exception, have stalled in the past decade, it is expected that fewer than 20 requests per year are likely to be received during any of the initial 3 years of implementation of the regulation.

The National Park Service has significant experience in consulting with Indian tribes, undertaking cooperative activities, and developing formal relationships for specific purposes. Extensive consultation with Native Americans was conducted to better understand the potential benefits and costs of this rulemaking. The government-to-government relationship itself acknowledges the critical aspect of Native American political sovereignty that incorporates geographical and environmental characteristics by requiring consultation regarding Federal programs and projects that may have impacts upon the abilities of tribal governments to conduct their affairs in traditional ways.

Six tribal consultation meetings were held in the "Lower 48" to consult with Indian tribes on this proposed rule. Locations in or near units of the National Park System where gathering by tribal members has been discussed over the years were selected in consultation with Indian tribes and NPS regional and park staff. One hundred and fifty representatives from 50 tribes attended meetings held from May through July 2010, in Bar Harbor, Maine; Flagstaff, Arizona; Pipestone, Minnesota; Yurok, California; Suquamish, Washington; and Cherokee, North Carolina. Tribal Historic Preservation Officers, designated pursuant to provisions of the National Historic Preservation Act, were present at each meeting. An additional meeting was held at Pipestone, Minnesota, in September 2010.

Consultation was conducted in Alaska by the NPS regional office and park staff. Park staff contacted 70 Alaska Native groups traditionally associated with parks in Alaska. These contacts were followed up by telephone calls and meetings. Presentations were given at two statewide conventions. First, at the Alaska Tribal Leaders Summit in Fairbanks during the annual meetings of the Alaska Federation of Natives in October 2010, and second, at the annual Bureau of Indian Affairs Providers Conference in Anchorage in December 2010. A conference call with traditional elders and tribal peoples not associated with tribal governments was also conducted in June 2010 at the request of Arvol Looking Horse, Keeper of the Sacred White Buffalo Calf Pipe of the Lakota, Dakota, and Nakota Nation of the Sioux. Park managers and staff also attended these consultation meetings and participated in the discussions. The major concerns of representatives of tribal governments are addressed in the proposed rule.

The remainder of this analysis addresses the expected number of agreements, the existing capacity of NPS to enter into and enforce agreements, potential affect on natural resources, the expected total cost of the rulemaking, and the expected qualitative benefits of the rulemaking.

**Expected Number of Agreements.** The entire period over which tribes might seek to establish agreements is uncertain. However, NPS experience in working with the 3 groups of tribes described above suggests that fewer than 20 requests per year are likely to be received during any of the initial 3 years of implementation of the regulation. NPS believes this to be a reasonable estimate for the following reasons.

- (1) NPS's 15 year history with the Tribal Self-Governance Program which offers similar opportunities to negotiate and enter agreements as does the proposed rule, has produced 3 or fewer new or modified agreements annually. NPS expects more agreements under the proposed rule than under the Self-Governance Program because the current regulations for Self-Governance are vague and poorly understood by the "non-BIA" agencies within the Department of the Interior and by many of the Self-Governance Tribes themselves. It is unclear what must and must not be included in formal annual funding agreements which leads to false starts, misunderstandings, and often failures to reach agreements. The proposed rule, on the other hand, is clear about what is required in tribal-NPS agreements for plant gathering for traditional purposes, and thus has a higher potential for successful negotiations.
- (2) The framework of the proposed rule will provide a means for implementing statutorily established use rights, which does not currently exist.
- (3) NPS experience with Memorandum of Understanding with tribes, which with one exception, have stalled in the past decade at least in part in expectation of a proposed rule intended to change and clarify NPS ability to enter into agreements for plant gathering for traditional purposes.

**Historical data.** The Pacific West Region (PWR) provides illustrative data for the period 1995 through 2001. PWR is significant as one of the NPS regions with the largest amount of NPS lands and largest numbers of tribal governments. The PWR surveyed all of the parks in the region to determine tribal interest and park responses to tribal requests for the use of plant resources for 6 years. During this period, 16 NPS units developed agreements with tribes. Of those, 4 agreements were based upon statutory conditions for special use permits. Further, 8 agreements were developed based upon standardized documents prepared from model agreement provisions, which included how tribal members were to be identified, how NPS would provide notifications to tribes, how collection activities were to be monitored, how confidentiality and privacy was to be preserved, how disputes were to be resolved, and how sustainable environmental conditions and resources were to be ensured. Over the 1995-2001, approximately 2 agreements per year were requested and determined feasible for development. If the rate of agreements per year in the PWR is extrapolated nationwide, a total of about 32 agreements over the 15-year period of analysis might be anticipated.

Additional data is available from NPS responses to Freedom of Information (FOIA) Requests from the organization Public Employees for Environmental Responsibility (PEER). On December 18, 2009, the organization Public Employees for Environmental Responsibility (PEER) sent a Freedom of Information Act (FOIA) request to Director Jonathan Jarvis requesting an update on agreements with Indian tribes that allow the taking of park resources. PEER requested (1) copies of all agreements or special use permits since September 11, 2002 and January 2010, (2) copies of environmental compliance for any such agreements or permits. This request was forwarded to the Acting NPS FOIA Officer who then referred it to the NPS Regional FOIA representatives with the intention of developing a coordinated NPS response. While acknowledging that not all parks would have responsive documents, each NPS Region was requested to ask each park about the existence of the requested documents. Once the information was collected, the Acting NPS FOIA Officer worked with the American Indian Liaison Office to develop a

response. Twelve parks provided documents. Most of these were special use permits from Hawaii Volcanoes NP and are not relevant to the proposed rule.

Thus, the upper bound on the number of agreements is estimated at 32. The lower bound of 10 is estimated from the information collected in response to the FOIA request.

**NPS Capacity to Enter into and Enforce Agreements.** The data collected above, covering the period 1995-2010, shows that of those NPS unit superintendents who took part in the discussions, no previous agreements required extraordinary commitments of staff time or resources. All of the agreements were undertaken within the capacities of normal work plans and existing funding, relying on existing staff that typically undertake activities relevant to the government-to-government relationship with tribes. Most of those activities consist of formal consultation and any resultant mutually agreed-upon efforts.

For this rulemaking, agreements are to be developed based upon requests from tribes or appropriate Native groups. NPS units can determine whether development of an agreement is consistent with current policies, workplans, budgets, and available staff or administrative resources. The range of plants or plant parts that may be gathered under agreements can be reasonably estimated based upon existing relationships between NPS units and tribes or other Native groups. To date, no NPS unit or NPS unit superintendent has reported that authorizations for subsistence or agreements to exercise special use rights have resulted in the gathering of plants or plant parts not expressly specified. No NPS unit or NPS unit superintendent has reported that any materials gathered according to authorizations or special use rights have been subject to commercial uses. All of those authorizations and agreements conform with NPS Organic Act requirements and policy for preservation of natural resources to be unimpaired for future generations.

Protocols for non-compliance in an agreement for gathering do not inhibit enforcement of the resources protection provisions in the proposed rule at 36 CFR section 2.6(i) (suspension and termination of agreements) and section 2.6(j) (prohibitions). An action prohibited under 2.6(j) would be punishable under the penalties described in 36 CFR section 1.3. These protection provisions can always be undertaken as a separate matter. Agreement protocols for non-compliance are important to address matters that may not be covered under section 2.6, such as failures to adhere to provisions for monitoring or reporting that directly affect the ability to (i) assess compliance with the agreement, (ii) understand the nature of traditional practices relative to sustainability, (iii) ensure that agreements do not inadvertently result in commercial uses, or (iv) develop mutually agreed-upon cooperation for enforcement. Development of the protocols for non-compliance in an agreement should not, however, involve novel or questionable legal issues or be contrary to NPS policy.

No additional information collection activities beyond those estimated would be required. Appropriate government-to-government consultation occurs throughout the terms of the authorizations or special use agreements as provided. The major concerns of tribes and NPS administrators demonstrate that agreements for traditional gathering can be developed and undertaken within existing workplans and resources of tribes and NPS units. In conclusion, the proposed rulemaking does not create a potential significant additional burden that available staff cannot address beyond normal workloads or existing resources.

**Potential Effect on Resources.** Potential adverse impacts on NPS resources by the proposed rulemaking can be estimated based upon the extent to which subsistence authorizations or special use agreements

have been incorporated into any natural resources inventories or management plans. No NPS unit or NPS superintendent has reported that natural resources inventories are affected by subsistence or special uses. Subsistence and special uses are conducted according to programs developed consistent with NPS management policies and are determined to have no significant impact upon the specified resources and materials. They are conducted according to traditional practices that are determined to be sustainable and consistent with values stated in NPS policy. Agreements for gathering are to be consistent with NPS policy and based upon appropriate analyses of natural resources values and traditional cultural practices. No agreement can be concluded if analyses indicate conflicts with those matters.

The proposed rulemaking expressly prohibits commercial use of natural resources.

**Estimated Total Cost of Agreements.** No NPS superintendent has reported any significant economic impact of gathering plants or plant parts, whether as the result of subsistence authorizations or legislatively authorized special use agreements with Indian tribes. The two tables below provide estimates of expected administrative costs based upon the numbers of potentially affected parks and likely interested tribes, as discussed above. The information provided in these tables represents NPS experience in developing agreements with tribes that include provisions for gathering plants or plant parts according to NPS requirements and policies. While agreements vary considerably such that none can be considered a perfect model, all have the activities summarized below. Again, the activities identified are based on NPS' experience over 1995 through 2010 in responding to tribal requests and proceeding with development of formal agreements when review of the current conditions warranted. The agreements and experiences of NPS units, which are summarized in the tables, were obtained by the NPS American Indian Liaison Office from specific requests made to parks and regional offices for these analytic purposes.

Table 1 identifies the relevant steps involved in developing agreements, and provides estimates of the associated staff hours and costs. In summary, each agreement is estimated to cost on average the NPS approximately \$11,742 (\$2014). An additional column for discussion provides additional information to clarify what is involved with each step and what qualified personnel are needed to accomplish it. As shown in Table 2, the estimated total annual costs for the NPS to administer this rulemaking are estimated to range between \$117,420 and \$375,744 (\$2014). The key variables in this analysis are estimated cost per agreement and the number of agreements entered into annually. If these estimates are higher or lower the estimated costs associated with the regulation will differ from the totals presented in table 2.

**Table 1. Estimated NPS Administrative Costs per Tribal Agreement (based upon agreements developed between 1995 and 2010).**

Activity	Number of hours	Hourly cost (\$)	Basis of hourly cost estimate	Estimated Annual Cost per activity (\$2014 )	Discussion/comments
Review of Application -- superintendent	1	62.67	62.67 (48.21 per hour GS-15/1, plus 30% benefits)	62.67	Superintendent review
Review of application -- staff	3	37.92	37.92 (29.17 per hour, 2014 GS 12/1, plus 30% benefits)	113.76	Review by qualified staff and background summary with recommendations for superintendent.
Environmental Assessment (NEPA)	120	37.92	37.92 (29.17 per hour, 2014 GS 12/1, plus 30% benefits)	4,550.40	Compliance review and analysis. Full cost is based upon a determination of environmental impacts, if any.
Negotiation of agreement	170	37.92	37.92 (29.17 per hour, 2014 GS 12/1, plus 30% benefits)	6,446.40	Qualified staff and superintendent consult with requesting tribe, prepare full background report and administrative record, draft agreement, and finalize agreement.
Monitoring and enforcement of agreement	15	37.92	37.92 (29.17 per hour, 2014 GS 12/1, plus 30% benefits)	568.80	Agreement incorporated into existing management plans. Such plans already include appropriate inventorying, impacts analyses, and sustainability assessments. Compliance review, coordination with tribe about compliance provisions in the agreement, and action if needed.
Total per Agreement	309			\$11,742	

**Table 2. Estimated Total Administrative Costs to NPS from Rulemaking over 2014-2025 (\$2014).**

Estimated Number of Future Tribal Agreements over 2015-2025	10-32
Estimated Total Cost per Agreement	\$11,742
Estimated Annual Administrative Cost of Rulemaking (\$2014)	<b>\$117,420</b> - \$375,744
Present value of costs over the 15 year period of analysis:	7% discount rate: \$1.1M - \$3.4M 3% discount rate: \$1.4M – 4.5M

**Economic Benefits.** The economic benefits of this regulation are evaluated on a qualitative basis because it is not possible to quantify and monetize the benefits associated with tribal cultural resources. Tribal cultural resources clearly have value. Cultural resources may be described by elements that are impressionistic in nature that may not be easily captured in some measurable way. Value for most private-market goods is manifested in market prices, but this is generally not the case for cultural resources.

Native American cultures are unique in America for the extent to which social relations, spirituality and values, and the natural world are so closely intertwined. Native peoples interact with the natural world in ways that depend upon direct access to specific places and natural materials. The United States always has recognized these cultural aspects of Native American life through treaty provisions, statutory actions by Congress that confirm special uses, and formal programs undertaken by Federal agencies that involve interactions with tribes. The proposed rule for gathering specific natural materials is needed to further these various purposes.

Natural materials are fundamental to political relationships, where tribal interactions, both internal and external, depend upon occasions such as feasts to provide formal, ongoing substantiation. Feasts may be honorific or recognize certain people or formalities. Often, at ceremonial occasions plants or plant parts serve to resolve conflicts through negotiation and mediation rather than direct confrontation.

Natural materials are fundamental to spiritual relationships and expressions of values. Certain tribal members have roles as spiritual guides and interpreters. Their responsibilities are carried out through uses of natural materials that represent a variety of belief systems as well as possessed of such things as medicinal qualities. When gathered properly and used in traditional ways, specific natural materials help confirm tribes' identities. Often, natural materials are transformed into objects such as bowls, utensils, sculpture, or house adornments with artistic expression which furthers the quality of intertwined identities between people and the natural world. Such objects can obtain paramount significance when they are used in ritual, referred to in songs or poetry, and required to be formally transferred from one generation to the next or within specified family groups and clans.

Natural materials are fundamental to tribes' traditional practices for uses of food and medicine. Plants or plant parts are both food and medicine while simultaneously representative of the extent to which traditional knowledge is maintained and transmitted. Typically, plants or plant parts have multiple uses



as food and medicine. The leaves or flowers of a specific plant might be made into tea or condiment. Those same leaves or flowers also might serve as an analgesic or decongestant. People who possess knowledge about these traditional uses and the traditional practices to prepare natural materials for their various purposes often are revered by tribal members, who thereby recognize individuals as keepers of tribal culture.

The tribal consultation held prior to developing this proposed rule demonstrated that the critical needs for gathering authorized natural materials would be met by current methods pursuant to NPS administrative procedures and policies for development of formal agreements. The results of no consultation meeting indicated that development of beneficial agreements would require additional staff or existing resources

In summary, given the limitations on data availability and the challenges with quantifying and monetizing benefits associated with cultural resources, the costs and benefits of this proposed rulemaking are reasonably well understood based upon previous and current experiences of NPS in responding to tribal requests, consultation with tribal governments, and development of mutually agreeable formal relationships affecting natural resources materials within units of the National Park System. The analysis shows that the activity expected from the proposed rulemaking is largely administrative in nature and can be undertaken using existing staff, resources, and existing workplans.

### **Alternatives Considered by NPS**

Existing NPS regulations, promulgated in 1983, prohibit “possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state” living or dead wildlife or fish, plants or plant products, paleontological specimens, or mineral resources, or the parts or products of any of these items, except as otherwise provided in the NPS regulations. The proposed rule, to be codified at 36 C.F.R. §2.6, would create an exception to this general prohibition by authorizing the resource and location specific agreements between NPS and federally recognized Indian tribes to gather plants or plant parts for traditional purposes.

NPS is authorized under the existing regulation at 36 CFR 2.5(b) to issue permits allowing the collection of park resources for research purposes upon certain conditions. Permits may be issued only to employees of reputable scientific or educational institutions or State or Federal agencies for the purpose of research, baseline inventories, monitoring, impact analysis, group study, or museum display when the superintendent determines that the collection is necessary to the stated scientific or resource management goals, that all applicable Federal and State permits have been acquired, and that the intended use of the specimens and their final disposition is in accordance with applicable law and Federal administrative policies. A permit may not be issued if “removal of the specimen would result in damage to other natural or cultural resources, affect adversely environmental or scenic values, or if the specimen is readily available outside the park area.”

Section 2.5(c) of the same existing regulation prohibits issuing a permit to take a specimen that is listed as an endangered or threatened species under State or Federal law unless the specimen “cannot be obtained outside of the park area and the primary purpose of the collection is to enhance the protection or management of the species.”

Neither of these provisions of §2.5(b) and §2.5(c) would be affected by the proposed rule, which does not deal with collection for the purposes of research, except for any associated research that may be needed to fulfill the requirements of this proposed rule.

Under 36 CFR 2.1(c)(1) a park superintendent is authorized to “designate certain fruits, berries, nuts or unoccupied seashells which may be gathered by hand for personal use or consumption” ... if ... “the gathering or consumption will not adversely affect park wildlife...” or otherwise adversely affect the plant species or park resources. Section 2.1(d) of the same existing regulation states that the regulations “shall not be construed as authorizing the taking, use or possession of fish, wildlife, or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 (wildlife protection) or §2.3 (fishing).” The proposed rule would permit the gathering of plants or plant parts for traditional purposes, including ceremonial or religious purposes, under specific tribal agreements, but would not alter the general prohibition on taking fish or wildlife for such purposes.

36 CFR §13.35(b) and §13.35(c) regulate the preservation of natural products in some, but not all, of the National Park System units in Alaska, and allow for the limited gathering of a wider range of natural products in those park units than are included in this proposed rule. For purposes of 36 CFR § 13.35(b), natural products includes “living or dead fish and wildlife or parts or products thereof....” Section 13.35(c) permits gathering, by hand and for personal use only, of renewable resources such as “natural plant food items, including fruits, berries, and mushrooms, but not including threatened or endangered species; driftwood and uninhabited seashells; [and] such plant materials and minerals as are essential to the conduct of traditional ceremonies by Native Americans...” The proposed rule would neither affect this provision in applicable National Park System units in Alaska, nor would it address subsistence issues authorized in Alaska by 36 CFR §13.400-§13.495. The proposed rule would, however, cover the four park units excepted in §13.35(a).

Since none of these permits or authorizations provide the needed ability to protect natural resources and to respond to appropriate requests by tribal governments, it has been determined that the proposed regulatory change should be undertaken.

### **Uncertainty**

The above analysis is based on best readily available data, information from ethnographic and subsistence economy studies conducted in cooperation with Native American tribes and peoples, information relating to the varieties of tribal governments and organizations, and information from existing agreements. The majority of uncertainty involved in this analysis is primarily associated with estimating the number of annual agreements that would occur annually and in total over the period of analysis. The number of agreements is the most important driver of the estimated annual costs.

### **Conclusion**

The benefit-cost analysis presented above suggests that the proposed regulation will not exceed the \$100 million annual economic impact threshold. In addition, this proposed action, especially since it specifically prohibits commercial uses, will not impose restrictions on local businesses in the form of fees, training, record keeping, or other measures that would increase cost. The natural materials which are the subject of the proposed rulemaking may be gathered only according to formal agreements pursuant to NPS requirements and policy, are only for personal or tribal use according to traditional

cultural practices, and as such do not affect small businesses. Given these findings, the proposed regulation will not impose a significant economic impact on a substantial number of small entities.

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